

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA            ) NO. 3:CR-09-272  
                                          )  
                  v.                    )  
                                          )  
MICHAEL T. CONAHAN,                 )  
                                          )  
                  Defendant.         )

STATEMENT TO THE COURT BY GOVERNMENT COUNSEL  
IN CONNECTION WITH GUILTY PLEA COLLOQUY;  
ACKNOWLEDGMENT BY DEFENDANT

A. PRELIMINARY STATEMENT

Your Honor, the evidence in this case arises from a lengthy investigation conducted by the FBI and the Internal Revenue Service. For purposes of today's proceeding, I will reference only sufficient evidence to establish all of the essential elements of the offense charged.

Before coming to court today, the defendant had the opportunity to review the statement of offense conduct I am about to read to the court. It is my understanding that, during today's proceeding, the defendant will acknowledge the accuracy of the proffered factual evidence, will acknowledge that -- if the case had gone to trial -- the evidence would have established all of the elements of the offense charged beyond a reasonable doubt, and will also acknowledge that he is guilty of the offense charged in Count 2 of the Indictment.

As is common in criminal cases, the government and the defendant may not be in complete agreement at this time on all of the facts alleged in the Indictment. The parties understand that

the Probation Office will conduct a presentence investigation and will propose findings of facts to the Court in a Presentence Investigation Report and that the proposed findings of fact may include facts with which the government and/or Mr. Conahan and his attorneys may disagree. As to any disputed material facts which remain at the time of sentencing, the parties agree to be bound by findings of fact to be made by Your Honor. The parties agree and understand that any factual findings Your Honor may make will be made utilizing the "preponderance of the evidence" standard.

In addition, the parties have not reached agreement on the amount of restitution to be made by Mr. Conahan and the parties have agreed to be bound by the findings of the Court with regard to restitution.

B. STATEMENT OF OFFENSE CONDUCT

If this case had gone to trial, the government would have presented the testimony of witnesses and would have presented documentary evidence, including documents obtained through issuance of grand jury subpoenas and from public records. The testimony and other evidence would have proven the following, beyond a reasonable doubt:

The Existence of an Enterprise

The Court of Common Pleas for Luzerne County, part of the Judicial Branch of the government of the Commonwealth of Pennsylvania is a legal entity that constituted an "enterprise"

within the meaning of federal law.

The Enterprise Was Engaged In Or Its Activities Affected  
Interstate Commerce

The Court of Common Pleas provided services to the public and had a budget for the acquisition of goods and services. Through the provision of services, and through the expenditure of monies in its budget, the Court of Common Pleas was directly engaged in interstate commerce.

The Defendant Was Employed By Or Associated With The  
Enterprise

Michael Conahan held the position of judge and performed services as a judge of the Court of Common Pleas for Luzerne County. Between approximately January of 2002 and January of 2007, Michael Conahan held the position of President Judge and performed services as President Judge for the Court of Common Pleas. Through his position and performance of services, Michael Conahan was "associated with" the Court of Common Pleas within the meaning of applicable federal law.

As a judge of the Court of Common Pleas, Michael T. Conahan owed a fiduciary duty to the citizens of the Commonwealth of Pennsylvania. One source of the fiduciary duty was imposed by Pennsylvania constitutional law, including, Article 5, §§ 17(b) and 17(c) of the Pennsylvania Constitution which provide that no judge shall engage in any activity prohibited by law and that no judge shall be paid or accept any fee, emolument or perquisite other than the salary and expenses provided by law.

Another source of the fiduciary duty owed arose from Michael T. Conahan's position as a judge of the Court of Common Pleas, including requirements of the Pennsylvania Code of Judicial Conduct and Administrative Orders of the Pennsylvania Supreme Court regarding matters related to Judges of the Court of Common Pleas.

The Defendant Knowingly Participated, Directly And Indirectly, In The Conduct Of The Enterprise's Affairs

As President Judge, Michael Conahan held a managerial position within the Court of Common Pleas. He knowingly conducted the affairs and/or participated directly and indirectly in the conduct of the affairs of the Court of Common Pleas and he took part in the operation and management of the Court of Common Pleas.

The Defendant Knowingly Participated, Directly And Indirectly, In The Conduct Of The Enterprise's Affairs Through A Pattern Of Racketeering Activity As Alleged In The Indictment

Michael Conahan and Mark Ciavarella together committed at least two of the acts of racketeering activity as alleged in the Indictment.

First, as alleged as Racketeering Act 2 in the Indictment, on or about July 15, 2005, Michael T. Conahan and Mark A. Ciavarella, for the purpose of executing a material scheme and artifice to defraud the Citizens of Luzerne County and of the Commonwealth of Pennsylvania of their right to the honest services of Michael T. Conahan and Mark A. Ciavarella, did

knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce a wire transfer of \$1,000,000 to a bank account of the Pinnacle Group of Jupiter, LLC.

Second, as alleged as Racketeering Act 3 in the Indictment, on or about February 3, 2006, Michael T. Conahan and Mark A. Ciavarella, for the purpose of executing a material scheme and artifice to defraud the Citizens of Luzerne County and of the Commonwealth of Pennsylvania of their right to the honest services of Michael T. Conahan and Mark A. Ciavarella, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce a wire transfer of \$150,000 to a bank account of the Pinnacle Group of Jupiter, LLC.

These racketeering acts were related to each other in that, among other reasons, they were part of a continuing kickback gratuity scheme by a number of persons including Robert Powell (who had an ownership interest in PA Child Care, LLC and Western PA Child Care, LLC), Michael T. Conahan and Mark A. Ciavarella, Jr. to improperly reward Michael T. Conahan and Mark A. Ciavarella, Jr. for favorable treatment provided by Conahan and Ciavarella in their official actions in connection with the construction of juvenile detention facilities owned by PA Child Care, LLC and Western PA Child Care, LLC. The evidence would have shown that, between approximately January of 2003 and January 1, 2007, Conahan and Ciavarella accepted a total of more

than \$2,600,000 that included significant kickback gratuities.

The evidence would have shown that more than \$1,700,000 in kickback gratuities were paid to Conahan and Ciavarella between January of 2003 and February of 2006 through Robert Powell and by wire transfer to Pinnacle Group of Jupiter, LLC, after each occasion on which Mericle Construction Company received payment from PA Child Care, LLC and Western PA Child Care, LLC for the construction of two juvenile detention facilities and an addition to one of those facilities. Pinnacle Group of Jupiter, LLC was a company that was nominally owned by the wives of Conahan and Ciavarella but was controlled by Conahan and Ciavarella for the purpose of jointly owning a condominium in Jupiter, Florida for the personal use of Conahan and Ciavarella.

The trial evidence would have shown that, in order to hide the fact that they received money from Mericle and Powell, Michael Conahan and Mark Ciavarella, among other acts, caused some of that money to be wire transferred to persons or business entities other than themselves.

Among other wire transfers, the testimonial and documentary evidence would have shown that: (1) on January 21, 2003, an electronic funds transfer of \$610,000 was made from an account under the control of Robert Mericle to an attorney trust account to be held in trust for Conahan and Ciavarella; (2) on July 12, 2004, Conahan and Ciavarella directed that an electronic funds transfer of \$120,000 be transferred from an account of Vision

Holdings, Inc., a business controlled by Robert Powell to an account of the Pinnacle Group of Jupiter, LLC, a business entity controlled by Michael Conahan and Mark Ciavarella but nominally owned by their wives; (3) on September 23, 2004, Conahan and Ciavarella directed that an electronic funds transfer of \$100,000 be transferred from an account of Vision Holdings, Inc. to an account of Pinnacle Group of Jupiter, LLC.; (4) on July 15, 2005, Conahan and Ciavarella directed that an electronic funds transfer of \$1,000,000 be transferred from an account under the control of Robert Mericle to an account of Pinnacle Group of Jupiter, LLC; and, (5) on February 3, 2006, Conahan and Ciavarella directed that an electronic funds transfer of \$150,000 be transferred from an account under the control of Robert Mericle to an account of Pinnacle Group of Jupiter, LLC.

At trial, the government would have presented testimonial and documentary proof of those wire transfers, and others. The government would have also presented the testimony of bank officials to prove that the wire transfers directed by the defendants caused wire transfers to be made across state lines. For example, with regard to the \$1,000,000 wire transfer from a bank account under the control of Robert Mericle on July 15, 2005, the government would have introduced testimony of a bank official who would have testified that the wire transfer from the account of Mericle Construction Company caused a wire to be sent by the company's bank in Pennsylvania to the Federal Reserve Bank

of Boston in Massachusetts and also to the bank's wire room located in Rhode Island.

The trial evidence would have shown that, during the time period Michael Conahan and Mark Ciavarella agreed to accept and accepted the more than \$2,600,000 that included kickback gratuities from Mericle and Powell related to the construction of juvenile detention facilities owned by PA Child Care, LLC and Western PA Child Care, LLC, Conahan and/or Ciavarella acted as judges of the Court of Common Pleas for Luzerne County with discretionary decision-making authority in multiple matters related to PA Child Care and Western PA Child Care, LLC.

For example, with regard to Michael Conahan, the trial evidence would have shown that on or about January 29, 2002, Conahan, acting in his capacity as President Judge of Luzerne County, signed a "Placement Guarantee Agreement" between PA Child Care and the Court of Common Pleas for Luzerne County to house juvenile offenders at the PA Child Care facility. The "Placement Guarantee Agreement" provided that the Court of Common Pleas for Luzerne County would pay PA Child Care the annual "Rental Installment" sum of \$1,314,000 and stipulated that "[t]he obligation of the Court to make payment of the Rental Installments shall be absolute and unconditional." Robert Powell used the "Placement Guarantee Agreement" to obtain financing for construction of the PA Child Care facility.

Similarly, in or about December, 2002, Michael Conahan,

acting in his capacity as President Judge of Luzerne County, took official action to remove funding from the Luzerne County judicial budget for the Luzerne County juvenile detention facility, effectively closing a county-owned youth detention center.

Additionally, in approximately December of 2004, PA Child Care, LLC filed a lawsuit listing as defendants an auditor of the Pennsylvania Department of Public Welfare, the regional director of the Pennsylvania Office of Children, Youth and Families, and the Luzerne County Controller. The lawsuit filed by PA Child Care, LLC sought temporary injunctive relief against the parties named as defendants and sought an order sealing the record. On December 17, 2004, before any defendants had an opportunity to respond to the lawsuit, Conahan summarily granted PA Child Care, LLC's motions seeking injunctive relief and motion to seal the record. The effect of this order and the sealing of the record made it more difficult for auditors and the public to learn of possible financial or other irregularities in the operation of the PA Child Care facility.

As part of the scheme devised by Michael Conahan and Mark Ciavarella, materially false records were prepared to hide their receipt of money. For example, in order to conceal monies paid to the them by Robert Mericle, multiple written "Registration and Commission Agreements" were prepared which falsely purported to be agreements for broker's fees to be paid by Mericle to Robert

Powell. In fact, however, trial testimony and financial records would have indicated that the monies identified in the fraudulent agreements were intended by all parties to be paid to Conahan and Ciavarella.

To further conceal the monies paid by Mericle to Michael Conahan and Mark Ciavarella during the course of the schemes, testimonial and documentary evidence would have shown that the monies were sometimes transferred to business entities under the control of Conahan and Ciavarella, such as Beverage Marketing of PA, Inc., under the control of Michael Conahan, and Pinnacle Group of Jupiter, LLC, which was a business entity controlled by Conahan and Ciavarella but nominally owned by their wives. The government would have presented documentary evidence at trial to prove that false entries were made in the books and records of Beverage Marketing of PA, Inc. and Pinnacle Group of Jupiter, LLC, to mask the source and/or purpose of these monies.

Beginning in approximately February of 2003, when construction of the PA Child Care juvenile detention facility was completed, and on or about January 1, 2007, Michael Conahan and Mark Ciavarella received payments of hundreds of thousands of dollars, in addition to kickback gratuities related to construction, from Robert Powell, who was an owner of PA Child Care, LLC and Western PA Child Care, LLC. Conahan and Ciavarella also took steps to conceal and disguise the nature and source of the monies paid to them by Powell.

Some of the payments from Powell were made by checks drawn on one or more bank accounts under Powell's control and were made payable to the Pinnacle Group of Jupiter, LLC. The payments included, but were not necessarily limited to, the following: \$18,000 paid on or about January 13, 2004; \$52,000 paid on or about January 13, 2004; \$78,000 paid on or about February 15, 2004; \$75,000 paid on or about February 15, 2004; \$47,000 paid on or about February 15, 2004; \$75,000 paid on or about April 30, 2004; and \$25,000 paid on or about April 30, 2004.

To conceal the payments to them, Michael T. Conahan and Mark A. Ciavarella, Jr. directed that false entries be made in the books and records of Pinnacle Group of Jupiter, LLC. For example, some of the payments were falsely characterized as rental income.

Michael T. Conahan and Mark A. Ciavarella were able to commit the racketeering activity by virtue of their positions as judges for the Court of Common Pleas and by virtue of their involvement in the affairs of the Court of Common Pleas. The official actions for which kickback gratuities were paid included: entering agreements guaranteeing placement of juvenile offenders with PA Child Care, LLC; taking official action to remove funding from the Luzerne County Court budget for the Luzerne County juvenile detention facility, effectively closing the county-run youth detention facility; and, through official actions and statements, facilitating the construction of juvenile

detention facilities and the expansion to one of those facilities by PA Child Care and Western PA Childcare.

The business of the Court of Common Pleas for Luzerne County included matters involving PA Child Care, LLC and Western PA Child Care, LLC. That business included the imposition of custodial sentences in juvenile cases that could be served at facilities operated by PA Child Care, LLC and Western PA Child Care, LLC. That business also included presiding over litigation involving Robert Powell and PA Child Care, LLC. Thus, the acts of racketeering committed within the time alleged in the Indictment amounted to and posed a threat of continued criminal activity.

#### RICO Conspiracy

The foregoing evidence would have established beyond a reasonable doubt that Michael T. Conahan and Mark A. Ciavarella, Jr. agreed to conduct and participate directly in the affairs of the Court of Common Pleas for Luzerne County, in the conduct of the Court's affairs through a pattern of racketeering activity, including the honest services wire fraud kickback gratuity scheme described a few moments ago.

The evidence also would have established beyond a reasonable doubt that Michael T. Conahan was a party to that agreement and that he entered into the agreement knowing of its objective to conduct and participate directly and indirectly in the affairs of the Court of Common Pleas through a pattern of racketeering

activity and intended to join together with at least Mark A. Ciavarella, Jr. to achieve that objective; that is that Michael T. Conahan and Mark A. Ciavarella, Jr. shared a unity of purpose and the intent to achieve the objective of conducting and participating in the conduct of the Court's affairs through a pattern of racketeering activity.

Your Honor, that is some of the evidence the government would have presented if the case had gone to trial. While it is not all of the evidence, the government suggests it is sufficient for today's purpose to establish the defendant's commission of each element of the offense charged.

C. ACKNOWLEDGMENT BY DEFENDANT

I have read the foregoing "Statements to the Court By Government Counsel In Connection With Guilty Plea Colloquy." I understand that these statements, including a "Preliminary Statement" and a "Statement of Offense Conduct" will be read in open court at the time of my guilty plea colloquy.

I have discussed this matter with my attorneys and I agree with the information contained in the Preliminary Statement and Statement of Offense Conduct. I further agree that, if this case had gone to trial, the government could have proven beyond a

reasonable doubt all matters averred in the Statement of Offense  
Conduct and each element of the offenses with which I am charged.

Dated: 7/22/10

M.T. Conahan  
Michael T. Conahan